



DUTY TO PROTECT ENVIRONMENT UNDER CONSTITUTION OF INDIA

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I. INTRODUCTION:

Human interferences with the nature for his development are as old as human civilization. But today in a zeal to conquer over nature human being is exploiting the resources unreasonably and going on polluting the terrestrial, marine and atmospheric environment by his activities, may it be industrial, agricultural, scientific or domestic, without even least caring that he is causing threat to his very existence on this planet Earth. In the words of Justice Krishna Iyer – It is a matricide towards mother Earth, a most heinous crime in the society¹.

Fresh air to breathe, uncontaminated water to drink, nutritious food to eat and hygienic conditions to live in are basic elements for the sound development of human personality. However, today what he is getting is everything polluted, air, water and food. Most of our rivers are polluted, industries are releasing poisonous gases in atmosphere and polluting the air, forests are over cut, the entire terrestrial, marine and atmospheric environment has been polluted. Industrialization, urbanization, population explosion, over exploitation of resources, poverty etc. are important factors responsible to environmental deterioration. In short, man's excessive and unreasonable interference with nature to satisfy his unending greed is the root cause of the problem. It has been observed by the Apex Court that "While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in unthinking use of power, encroaching endlessly on nature"².

Thus, man the best creature of the nature, has become a worst enemy of it. As a result, society is witnessing unprecedented environmental problems. If this is continued, then the day will not be far away when this planet earth will become unsuitable for survival of life. So, the issue of protection of environment has become not only an issue of global concern, but has assumed the top place in the list of priorities.

II. OBJECTIVES AND HYPOTHESIS:

Whenever the society faces problems, it tries to find solace by making law. As the nature of the problem is different one, it could not be tackled and solved at local level and it also requires special knowledge and skill. Realizing this the world community convened the international conferences at Stockholm in 1972, at Rio-de-Janeiro in 1992, at Johannesburg in 2002 etc., and Declarations are made, Action plans are prepared and implemented. At National levels many supporting legislative, administrative steps have been taken to deal with this problem. India is also a signatory to this and other conventions and it becomes its international obligation under Articles – 51, 253 of Indian Constitution to implement them by making laws. Accordingly, plethora of rules, regulations and administrative mechanism, have been made and established. More important among all these is that the Supreme Lex of the country has also been amended in response to these conventions and inserted the directive principle Art. 48 A and fundamental duty Art. 51 A (g). So, in this work an attempt is made to analyze directive principles of state policy and fundamental duties in Constitution of India which are helpful to protect the environment and to study the response of Indian Judiciary towards it. The hypothesis for present work is that the 42nd amendment to the Constitution of India which inserted the directive principle Art. 48 A and fundamental duty Art. 51 A (g) proved an effective tool for protection of environment and resorted by Judiciary to carve out fundamental right to healthy environment and the present researchwork is carried out by adopting doctrinal method of research.

III. CONSTITUTIONAL PROVISIONS OF 42ND AMENDMENT TOWARDS PROTECTION OF ENVIRONMENT

Suprema – Lex of the country contains special provisions for the protection and improvement of the environment. Constitutional 42nd amendment obligates the 'State as well as citizens to 'protect and improve' the environment. The example of the Indian Constitutional provisions has been followed by other nations in the world. For example, the framers of the Constitution of South Africa were greatly influenced by the provisions relating to environmental protection under Indian Constitution and they have also incorporated the similar provisions in their constitution³. The Constitution 42nd Amendment has inserted two articles 48 A

and 51 A (g) which are very important from the point of view of environmental protection⁴. The first is directive principle of state policy, casts duty on State including three wings of the state i.e. legislative, judiciary & executive to protect the environment and later article imposes fundamental duty on every citizen to protect and improve the environment.

IV. STATE AND CITIZEN'S DUTY TO PROTECT ENVIRONMENT:

India has taken several steps to implement its obligation under Stockholm declaration 1972, the most important among them is the insertion of Art 48 – A and Art 51 – A (g) in the Indian Constitution by Amending Act of 1976. It casts two fold duties both on State as well as Citizens not only to protect the environment but to improve it in case of any damage caused to it.

Art 48 A Provides that – "the State shall endeavor to protect and improve the environment and to safeguard the forest and wild life of the country."

Art 51 A (g) provides that – "it shall be the duty of every Citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creature."

Under Art 48 A, it has become duty of all the three organs of the state to protect and improve the environment. It has been held that the non-enforceable nature of the directive principles do not preclude the judiciary from declaring any law unconstitutional which is in violation of it⁵. Judicial process is also state action u/Art. 37 and the judiciary is bound to apply the directive principles in making judgement⁶. In discharging its obligation to protect environment, the judiciary in several cases have been guided by the language of Art 48 – A and 51 A (g).

In the case of T. Damodhar Rao v S. D. Municipal Corporation Hyderabad⁷, the court held that, in view of Art. 48 A and Art. 51 A (g), it is evident that the protection of environment is not only the duty of citizens but it is also the obligation of the State and all other State organs including Courts.

While discharging its obligation under Art 48-A, Indian Government has taken several legislative and administrative steps. It has passed laws to protect environment, prevent pollution, to conserve forest, wild life, biodiversity etc., established a separate Ministry for Environment and Forest, Pollution Control Boards etc. To this, Indian Judiciary has joined the hands by delivering landmark judgments (some are discussed in next paras) to protect environment.

Apart from State's duty under Art 48A, Art 51 A (g) refers to the fundamental duty of every citizen to protect and improve the environment. Rights and duties are co-relatives, one cannot exist without the other. So, when you are claiming the right to clean environment, at the same time you are also under duty to protect it from being polluted. Thus, the underlying emphasis of this fundamental duty is that every citizen has a duty to make an endeavor to preserve the environment in the same way as nature has gifted it to all of us. Similar to directive policy, the fundamental duties are also made non-enforceable. However, in due course of time the judicial activism provided an impetus to achieve the underlined objectives of the fundamental duties, particularly Art. 51 A (g).

In L. K. Koolwal v State⁸, petitioner moved to High Court under Art 226, highlighted the failure of the municipality to discharge its primary duty resulting in the acute sanitation problem in Jaipur which is hazardous to the life of the citizens of Jaipur. While explaining the true scope of Art. 51 A (g) the court observed that,

"We can call Art. 51 A ordinarily as the duty of the citizens, but in fact it is the right of the citizen as it creates the right in favour of citizens to move to the Court to see that the state performs its duties faithfully and obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the Court by the citizen and thus, Art 51A gives a right to the citizens to move to the Court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory

authorities created under particular law of the State.”

The court appreciated the move of the petitioner and directed the municipality to remove dirt, filth within a period of six months of the order. Thus, it is evident that Art 51 A(g) is not only a fundamental duty but it confers a fundamental right to approach directly to higher judiciary for inaction on the part of State in protection of environment.

V. DUTY TO PROTECT ENVIRONMENT AND JUDICIARY:

It has been discussed earlier that Art 48 A casts duty on State to protect and improve the environment and State includes all three organs including judiciary so, it becomes the obligation of Indian Judiciary to implement this obligation while discharging its duty to administer the justice. Accordingly, it has been held by Supreme Court in Sachidanand Pandey's case (referred above) that whenever problem of ecology is brought before the court, the Court is bound to bear in mind Art. 48 A and Art 51 A (g) of the Constitution. By resorting to the provisions of Art 48 A and Art. 51 A (g), Indian Judiciary has culled out the fundamental right to wholesome environment from Art 21. Though part III of the Indian Constitution does not contain any specific provision to provide right to healthy environment as a fundamental right but, in view of liberal interpretation of Art. 21 coupled with Art. 48 A & Art. 51 A(g), the Supreme Court held that Right to Life and Personal Liberty includes the Right to Wholesome Environment. The court has laid emphasis on duty aspect of State as well as of Citizen to protect and improve the environment and carved out the right to healthy environment for individual⁹.

The first recognition of the right to wholesome environment may be traced to the case of R. L. & E. Kendra, Dehradun – V- State of U.P.¹⁰, where in the representatives of this NGO, wrote a letter to the Supreme Court alleging that, illegal mining in Mussoorie Hills region was devastating the fragile ecosystem in the areas. The Supreme Court converted the letter into petition under Art. 32 of the Constitution and issued noticed to the government of U.P., Collector of Dehradun, several lessees, set-up expert committees. Finally, it ordered for gradual closure of mining in the region. However, none of these orders articulate the fundamental right to healthy environment.

However, the specific declaration of right to live in healthy environment was firstly made by A.P. High Court in T. Damodhar Rao – V – S. O. Municipal Corporation, Hyderabad¹¹, When it held that – “The slow poisoning by the polluted atmosphere should also be regarded as amounting to violation of Art. 21 of the Constitution.” There after, the Supreme Court, firstly in Charan Lal Sahu – V- UOI¹², and then in various cases unequivocally held that Right to healthy environment is part of Right to life u/Art. 21. In all these cases the judiciary was guided by the Constitutional mandates of Art. 48 A and 51 A (g).

It is evident from various decisions of higher judiciary discussed above that duty aspect of environmental protection under Constitution of India has proved to be a good tool to interpret the constitutional provisions to protect and safeguard the environment. These provisions have also been resorted to bring out the fundamental right to wholesome environment from the broader ambit of Art. 21, right to life and personal liberty.

VI. CONCLUSION AND SUGGESTIONS:

The perusal of all the above work reveals that Indian constitution contains unique provisions to protect and improve its environment. It has provided a sound edifice to build our own environmental justice system. The most fascinating aspect is that, the Constitution has laid emphasis on duty aspect, both of State as well as Citizen's, in protection of environment rather on right aspect. From this duty aspect (Art. 48 A and Art. 51 (g)), later on judiciary carved out the right i.e. right to wholesome environment as fundamental right. These provisions proved as an effective interpretative tool for Indian Judiciary to protect the environment and built a sound environmental jurisprudence of its own. The above analysis also shows that in order to tackle with this growing menace one has to discharge his obligation first, may it be State or Citizen, then only right comes to you. However, what is lacking is the proper implementation of the entire system. The vigilant citizen can shake the lethargic executive. Now it is time to play vital role by citizens. Many environmental activists, NGO's are doing a very good job, but there is need to strengthen their hands. Protection of environment be considered by everybody as his basic dharma of life. So, people's participation in Environment protection is very essential for that, people are to be aware and educated of environmental crisis.

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7. A.I.R. 1987 A.P. 171
8. AIR 1988, Raj 2
9. Subhash kumar – v- State of Bihar AIR 1991 SC.
10. AIR 1985, sc. 652
11. AIR 1987, A.P. 171
12. (1990) 1 scc 613